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No. 86-

IN THE SUPREME COURT

OF THE

UNITED STATES

October Term, 1986

RODNEY F. STICH

Appellant

vs.

CALIFORNIA COURT OF APPEAL JUSTICES HARRY LOW, DONALD KING, ZERN HANING; JUDGES DWIGHT ELY AND MICHAEL McINNIS; LARRY GIBBS, JEFFREY ROSS; FRIEDMAN SLOAN & ROSS

Appellees.

On Appeal from the United State Court of Appeals Ninth Circuit

JURISDICTIONAL STATEMENT

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Appellant in pro se

EDITOR'S NOTE

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QUESTIONS PRESENTED.

1. Are the statements and allegations in appellant's complaint frivolous according to the holdings of this Court, so as to deprive appellant his federal due process right to relief?

2. Do actions and orders by state court judges causing great irreparable harm, violating clear and important state law, acting without personal and without subject matter jurisdiction, permit sua sponte dismissal of appellant's complaint?

3. Is a citizen without federal court relief, as the Ninth Circuit courts hold, under these conditions?

4. Does infliction of these actions by a state court upon a private citizen, and a citizens exercise of civil right violation remedies, permit sanctions and attorney fees, and double costs, for being "unhappy with the ... state [court] proceedings"?

3. Are the actions by the state court alleged by appellant, which must be accepted as true at this stage of the proceedings, to be considered in conformance with civil and constitutional rights, as interpreted by the courts of the Ninth Circuit?

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Denial Appeal.

Exhibit "B": Notice of Appeal to

EXHIBITS:

Exhibit "A": Decision of Court of Appeal Denial Appeal.

Exhibit "B": Notice of Appeal to U.S. Supreme Court.

OPINIONS BELOW

The United States Court of Appeals dismissed appellant's appeal on December 12, 1986 (Appendix "A."), after which appellant filed on January 5, 1987 a notice of appeal to the United States Supreme Court, filing the notice with the United States Court of Appeal. (Appendix "B.")

JURISDICTIONAL STATEMENT

Pursuant to Rules 13(2) and 15 of the Rules of the Supreme Court of the United States, appellant Rodney F. Stich files this jurisdictional statement. The basis for its filing is that the Supreme Court of the United States has appellate review, or in the alternative, writ of certiorari, in dismissal of actions by the United States Court of Appeals when such decisions are contrary to those of other appellate districts, or violate holdings of this Court.

It is contended that the Supreme Court

of the United States should exercise jurisdiction in this case under mandatory remedies, or in the alternative, as provided by Section 2103 of the Judicial Code, accept it as a petition for writ of certiorari.

The questions raised involve matters of major national importance, unconstitutional interpretations and application of state law that are now published decision and decisional law of the state of California, the role of the federal courts, and if such federal courts can arbitrarily grant or deny the right to federal court jurisdiction and relief. Additionally, the federal court of appeals has rendered a decision in conflict with the decisions of other federal court of appeals on the same matter of civil right jurisdiction, and the holdings of this Court. The decision has departed radically and unconstitutionally from the accepted and usual

course of judicial proceedings. The exercise of jurisdiction by this Court is critical.

Intimately involved in this action is a major aviation and government scandal, the nature of which falls within this Court's area of responsibilities.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitutional provisions involved in this case include, inter alia:

a. The Fifth Amendment right to federal due process.

b. The right to a federal court forum under Title 42 United States Code Sections 1983 and 1985.

c. The right to protection under 42 United states Code Section 1986, when civil right violations are brought to the attention of a party that has the power to act, and fails to do so.

d. The Fourteenth Amendment to the Constitution of the United States:

> ... nor shall any state deprive any person of life, liberty, or property, without due process of law ...

e. The right to interstate travel as guaranteed by the Commerce Clause, the Privileges and Immunities Clause of Article IV, Section 2; the Privileges and Immunities Clause of the Fourteenth Amendment; and the Due Process and Equal Protection Clause of the Fourteenth Amendment.

THE FEDERAL QUESTIONS ARE SUBSTANTIAL

The numerous violations of appellant's civil and constitutional rights, the denial of federal due process, with roots in an underlying aviation and government scandal, raises multiple federal questions, including:

a. Right of all citizens to federal court jurisdiction when subjected to violations clearly protected by the statutory and decision civil right violation protections and the Fifth Amendment to the United States Constitu-

tion.

b. Right to exercise federal court jurisdiction without being punished with a sham "frivolous" label and severe financial sanctions.

c. Right to fair and impartial trial before a federal district court, without punishing sanctions to discourage exercise of federal due process remedies.

d. Right to exercise state procedural due process remedies without mislabeling such exercise frivolous acts, for which $50,000 in orders, jail term, and bench warrant for arrest, arises.

e. Right to exercise state procedural remedies when state court acts without personal jurisdiction, acts without subject matter jurisdiction, including acts in violation of clear state law relevant to divorce judgment recognition, right to invoke court jurisdiction on basis of residence, right to protection of special appearance status, and right

to discovery.

f. The decision of the United States Court of Appeals is in direct conflict with the holding of this Court in Pulliam v. Allen (1984) 104 S.Ct 1970; Dykes v. Hoseman, 743 F.2d 1488 (11th Cir. 1984).

STATEMENT OF THE CASE

Appellant had filed a federal civil right violation action in the United States District Court, Northern District of California, alleging that he was suffering great and irreparable injury, that the defendants were violating clear and major state law, and that they were acting without personal and without subject matter jurisdiction. He alleged the defendants were unconstitutionally interpreting and applying state law.

District Court Judge Petal made a prompt sua sponte dismissal of the complaint even though it stated facts alleging that the judicial defendants rendered orders causing great and

irreparable harm, engaged in a deliberate and continuing violation of state, federal and constitutional law, acted without personal and without subject matter jurisdiction, which acting under color of state law.

After denying appellant his federal due process remedies the district court judge then used the frivolous label sanctions in a manner unconstitutionally depriving appellant of his federal due process, in clear violation of earlier holdings of this Court.

Appellant then filed an appeal of the dismissal with the United States Court of Appeals, and suffered the denial of due process and resulting financial punishment as he had received from the California judicial defendants and the district court.

Appellant was denied the right to appear in his own defense of the dismissal. The United States Court of

Appeals approved as proper the numerous violations of California, federal and constitutional law. Repeating the violations found in In re Marriage of Stich (1985) 169 Cal.App.3d 64, the Court of Appeals misused the frivolous sanction label in a manner never intended by law, and ordered appellant to pay attorney fees and double costs to the nonjudicial defendants.

A notice of appeal was then filed to the United States Supreme Court with the Ninth Circuit Court of Appeal.

STATEMENT OF FACTS

The initial violation of appellant's civil and constitutional rights commenced with the filing by the nonjudicial defendant law firm of a "divorce" action naming appellant as the husband of Emma Stich, a Texas resident. Appellant and his former wife had been legally divorced for the past two decades, since January 31, 1966, following a bilateral consent

divorce proceeding followed by a final divorce judgment. This 1966 judgment has been judicially registered in the Superior Court of the State of California, County of Contra Costa, as action 251773. In turn, that California judgment has been registered in the courts of Nevada, Colorado, Oklahoma, and Texas.

Appellant had been recognized as divorced under laws of prior states of residence, including New York.[1]

The defendants improperly refused to recognize the 1966 divorce judgment on the argument and holding that appellant's 1965 and 1966 residence in the divorce court forum did not constitute a recognizable basis for exercising and invoking court jurisdiction. They argued and held that divorce judgments are void

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[1] Rosenstiel v. Rosenstiel (1965) 262 N.Y.S. 86; In the Matter of Rhinelander (1973) 290 N.Y. 31; Greschler v. Greschler (1980) 434 N.Y.S. 2d 194.

when rendered by courts that did not require, did not determine, and the party did not acquire, the subjective mental thought processes of domicile.

This argument was tenaciously repeated for four years, although the law and court practice in all 50 States, under federal proceedings, and in California courts, base jurisdiction primarily on the same residence basis for personal jurisdiction that was then refused recognition.

This legally absurd holding was than enlarged in two hearings by refusing to allow appellant to present testimony and written evidence proving that he did in fact acquire domicile status during his 1965 and 1966 residence.

The defendants then violated federal decisional law, which supersede any nonconforming state law if it had existed. Federal law require recognition of the 1966 divorce judgment by all state

courts, and prohibit denying recognition to residence as a basis for invoking and exercising court jurisdiction.[2]

The violations of state law continued and escalated in frequency and severity. The judicial defendants refused to conduct a hearing on the California court's challenged personal jurisdiction after appellant filed a motion to quash. The hearing was required under California Rule of Court 1230(a)(2). After appellant filed the motion to quash challenging the California court's personal jurisdiction over him the court's authority and jurisdiction was then limited to conducting a hearing at which evidence of the prior divorce judgment would be received. Upon presentation of evidence of the prior divorce judgment the 1982 divorce action must be dismissed as a

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[2] Perrin v. Perrin, 408 F.2d 107 (3rd Cir. 1969); Sherrer v. Sherrer (1948) 334 U.S. 343; Coe v. Coe (1948) 334 U.S. 378; Vanderbilt v. Vanderbilt (1957) 354 U.S. 416.

matter of law.[3]

After denying appellant a hearing on the February 25, 1983 calendared motion to quash, the California court then rendered a May 9, 1983 decision, denying the motion, which stated in part:

> The challenge is based upon lack of jurisdiction of [the 1966 divorce] court, which in turn, is based upon lack of domicile of one or both parties in that jurisdiction.

Having denied appellant a hearing on the motion to quash, holding that residence is not an acceptable basis for personal jurisdiction, appellant remained in California Rule 1232 and Civil Code Section 4356 special appearance status. This status was reconfirmed two and a half years later when the California courts ordered appellant to undergo what developed into a five day motion to quash trial, which impliedly admitted that the Rule 1230 motion to quash hearing had

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[3] Calif. Code of Civil Procedure § 418.10(a)(1) and numerous divorce judgment recognition statutes.

never been conducted.

Under California Rule of Court 1232 and California Civil Code Section 4356 appellant was in protected special appearance status from the February 17, 1983 filing of the motion to quash, until the (second) decision on the motion, which was rendered on January 13, 1986. This special appearance status continues until appellate remedies are exhausted, which has not occurred as of the filing of this jurisdictional statement.

California law requires prompt resolution of the challenge to the California court's personal jurisdiction, and limits the defending parties defense to presenting evidence of the prior divorce judgment. This right was violated, as appellant was required to undergo a full blown trial, with its attendant intensive discovery, rather than a hearing.

Following the denial of the hearing on

the motion to quash, and denial of the motion in a May 9, 1983 decision, appellant was ordered to pay attorney fees and costs to finance his Texas adversary's impermissible collateral attack against him.

When the combination of the orders halting appellant's income and the orders to pay severe financial sanctions created financial problems that made it difficult to pay the sanctions, the defendants sought and ordered that appellant go to jail. When appellant appealed that jail order, which was also rendered while appellant was in special appearance, appellant was **again** held to be engaging in frivolous acts, for which he was again ordered to pay the nonjudicial defendants attorney fees and costs.

Appellant was in an impossible situation. His rights were openly and totally violated and if he exercised his appellate remedies in state court, he was

further harmed with devastating financial and character assassination sanctions. If he exercised his federal due process remedies, he was again hit with heavy financial sanctions.

During special appearance status, which continued for over four years, the following orders were illegally rendered:

(a) Order that appellant pay attorney fees and costs to be sued in a collateral attack action under the California Family Law Act, whose jurisdiction as defined in California Rule of Court 1201(c), and prohibited under Rule 1212, does not allow such actions.

(b) Order that halted appellant's use of his real estate investments, which then caused the halting of his sole source of income for over four years. This order brought about loss of appellant's home, his business properties, and serious financial problems.

(c) Order that appellant appear for discovery and a full blown (5 day) trial to relitigate the personal jurisdiction of the 1966 divorce court, during which the trial court was without authority in the Family Law Act, without personal and without subject matter jurisdiction, and in violation of California law.[4]

(d) Rendered order in published decision punishing appellant for exercising procedural due process remedies. Appellant was ordered to pay $50,000 for having exercised his fundamental constitutional rights as specifically provided by California law. (Motion to quash (Rule 1230(1)(2) and C.C.P. § 418.10(a)(1)--based upon prior

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[4] Statute of limitations (C.C.P. § 318, 338, 343; C.C. §§ 880.020, 880.250, 880.030; laches; Rules 1201(c), 1212; Evidence Code §§ 666, 622; C.C.P. §§ 1908, 1913, 1915, 1699(b), 1713.1, 1713.3, 1713.5; C.C. §§ 4554, 5004, 5162, 5164, 5172; Rediker v. Rediker (1950) 35 Cal.2d 796; Scott v. Scott (1958) 51 Cal.2d 259; Spellens v. Spellens (1957) 498 C.2d 210; Whealton v. Whealton (1967) 67 C.2d 656.

divorce judgment; petition for writ of prohibition (C.C.P. § 418.10(c)--based upon order denying motion to quash, which followed the refusal to grant a hearing on the motion being denied; appeal (C.C.P. §§ 902, 904.1--based upon ordering payment of attorney fees and costs, solely on self serving arguments of opposing counsel, while in special appearance status, without personal and without subject matter jurisdiction, and in violation of law.

(e) Repeatedly refused to render timely requested statement of decisions that are mandatory under statutory and decisional law, thereby avoiding the need to address the numerous violations of law.

(f) Character assassination in published decision (In re Marriage of Stich (1985) 169 Cal.App.3d 64) using fabricated "facts" that had never been part of any evidentiary hearing.

Appellant was suffering great and irreparable harm. His privacy was severely invaded for over three years; he suffered stress-induced emergency heart surgery; his income was halted during the three year period; he was unable to remarry, and lost a dear friend; and his personal and property rights were taken.

Following the rendering of the published decision appellant filed the underlying federal action seeking declaratory and injunctive relief, and civil right violation remedies. Appellant filed the action as provided by law when a state court judge either (a) violates clear state law; (b) acts without personal jurisdiction (arising from special appearance status and from prior divorce judgments); (c) acts without subject matter jurisdiction.

Federal court jurisdiction was properly invoked, based upon the violation of all three primary parameters

in civil right protective law. Appellant stated facts with sufficient specificity to identify the violations, and made reference to the published decision, In re Marriage of Stich, supra, which provided prima facie evidence of the violations.

In violation of the federal due process rights established in Title 42 United States Code Section 1983 and 1985, in violation of decisions of this Court, including Pulliam v. Allen, infra, and the Fifth Amendment to the United States Constitution, The district court made a sua sponte dismissal of appellant's complaint.

In addition, the federal district court repeated the violations perpetrated by the state judicial defendants, deceptively labeling appellant's exercise of federal due process right violations to be "frivolous," a meaning never intended by this Court. This deceptive

technique effectively voided constitutional and federal law protections as effectively as if the laws of the land were rescinded. Approving the multiple violations of major state, federal and constitutional law, the district court then openly misapplied the frivolous provisions to punish appellant, the victim of the violations.

Appellant then sought his next level of due process remedies, having been "stone-walled" in the California courts and in the district courts. Appellant filed an appeal with the Ninth Circuit Court of Appeal.

Appellant had requested oral argument of his appeal, which required granting a temporary restraining order to protect appellant from the bench warrant issued for his arrest as part of the overall violation of his civil and constitutional rights by the California defendants. This was denied, by refusing to address the

request, which then prevented appellant from appearing in defense of the order dismissing the action.

The bench warrant for appellant's arrest was rendered by the judicial defendants, for appellant's failure to personally appear at an Order to Show Cause hearing. The warrant was in violation of law, in that California Supreme Court decisions permit appearance by legal counsel; appellant, a Nevada resident, physically could not appear, as he was appearing simultaneously in a previously calendared civil right violation action in the United States District Court, Eastern District of California; the order for attorney fees that served as the basis for the OSC was on appeal, halting all trial court proceedings on the matter; both the original attorney fee order and the bench warrant were issued while appellant was in special appearance status, protected

against such orders.

Appellant files this appeal, or in the alternative, petition for writ of certiorari, to address the numerous violations of civil and constitutional rights by the nonjudicial and judicial state court judges, by the district court, and by the Ninth Circuit Court of Appeals.

ARGUMENT

I. APPELLANT STATED A CAUSE OF ACTION AGAINST THE JUDICIAL AND NONJUDICIAL DEFENDANTS, AND THEREFORE DISMISSAL WAS INAPPROPRIATE.

Plaintiff showed affirmatively by facts and allegations in his complaint and pleadings that the defendants (1) knowingly acted without personal jurisdiction; (2) knowingly violated state procedural and substantive law; (3) knowingly violated federal question rights; (4) while acting under color of

state law; and (5) caused plaintiff great irreparable harm. These statements of fact were stated with sufficient specificity to prohibit dismissal.

On appeal from the orders dismissing the district court action the court of appeals must accept the allegations in the complaint and supporting affidavits as true. Gardener v. Toilet Goods Assn., 387 U.S. 167, 172 (1967). An action, "especially under the Civil Rights Act, should not be dismissed at the pleadings stage unless it appears to a certainty that plaintiffs are entitled to no relief under any state of the facts, which could be proved in support of their claims." Escalera v. N.Y. Housing Auth., 425 F.2d 853, 857 (2nd Cir. 1970). See also Conley v. Gibson, 355 U.S. 41, 45-7) 1957); Sherman v. Yakahi, 549 F.2d 1287, 1290 (9th Cir. 1977); Mark v. Gross, 521 F.2d 1376, 1378 (9th Cir. 1975); York v. Gross, 521 F.2d 1376, 1378 (9th Cir.

1975); York v. Story, 324 F.2d 450, 453 (9th Cir. 1963). Obviously, plaintiff is entitled to relief as he has complied with the requirements.

Prohibiting dismissing a civil rights violation action at this stage of the pleadings, the United States Supreme Court stated in Dennis v. Sparks, 449 U.S. 24 (1980):

> With regard to a motion to dismiss for failure to state a claim, a section 1983 complaint should not be dismissed unless it appears that the plaintiff can prove no set of facts which would entitle him to relief ... For purposes of testing sufficiency of the complaint, the allegations of the complaint must be taken as true. Id. at 1499. [emphasis added.]

Plaintiff obviously cited numerous facts which entitles him to declaratory and injunctive relief, and damages.

In Dykes v. Hoseman, 743 F.2d 1488 (11th Cir. 1984), the dismissal standards articulated in Dennis v. Sparks, supra, are reaffirmed.

> Furthermore, private attorneys alleged to have conspired with immune state officials may be held

liable under section 1983. Id. at 371.

Plaintiff alleged that the nonjudicial defendants conspired with the judicial defendants.

II. APPELLANT SOUGHT DECLARATORY AND INJUNCTIVE RELIEF FOR VIOLATIONS OF STATE, FEDERAL AND CONSTITUTIONAL LAW, INVOKING MANDATORY FEDERAL COURT JURISDICTION.

The violations of civil and constitutional rights were major and repetitive, spanning a three year period. No reasonable person could have failed to recognize that the violations invoked federal court jurisdiction. The United States District Court improperly held that the complaint did not raise federal questions, did not invoke federal court jurisdiction, and was frivolous.

Federal court jurisdiction also arose from declaratory relief authority in 28 U.S.C. section 2201. The federal

supremacy clause requires federal court intervention when a state court refuses to recognize federal question rights. In the instant action the California courts have consistently, for almost four years, violated every relevant substantive and procedural due process right relating to divorce judgment recognition, right to a special appearance, right to protection against orders rendered in violation of law, and right to dismissal when the court lacks personal and subject matter jurisdiction. Appellant has been severely punished for exercising procedural due process as he sought to protect himself.

The United States District Court judge and the Ninth Circuit Court of Appeal impliedly held that a citizen of the United States must endure these violations, and that to invoke federal civil right protection seeking federal due process relief is a frivolous act for which citizens of the United States

should be financially punished. In this manner appellant was effectively stripped of the protection of law, just as effectively as if judicial anarchy had suspended all civil and constitutional rights.

In addition to civil right violation protection appellant was also entitled to declaratory and injunctive relief when the 1966 divorce judgment, the judicial registration and confirmation of that judgment in the Superior Court of the State of California, and the judicial registration in Nevada, Colorado, Oklahoma, and Texas, are denied recognition.

State law, federal law, and the Full Faith and Credit Clause of the United States Constitution, entitles appellant to recognition of the judgments and the personal and property rights established in the judgments. These rights were openly violated with the protection of

the federal courts of the Ninth Circuit, even though other federal courts have repeatedly exercised their responsibilities when similar violations occur: Sherrer v. Sherrer (1948) 334 U.S. 343; Coe v. Coe (1948) 334 U.S. 378; Perrin v. Perrin (3rd Cir. 1969) 408 F.2d 107; Vanderbilt v. Vanderbilt (1957) 354 U.S. 416; Spindel v. Spindel, 283 F.Supp. 797 (1968); Solomon v. Solomon 516 F.2d 1018 (3rd 1975); Wasserman v. Wasserman, 671 F.2d 832 (4th Cir. 1982); Cole v. Cole, 633 F.2d 1083 (4th Cir. 1980); Lutsky v. Lutsky (1970, DC Fla) 3410 F. Supp 517, affd without opinion (CAA5) 433 F2d 346; Tarr v. Tarr (1974, DC Tenn) 391 F.Supp 1053.

District Courts have the jurisdiction and responsibility to provide injunctive relief, under 42 U.S.C. section 1983, and decisional law. In Miofsky v. Superior Court of the State of California, 703 F.2d 332 (9th Cir. 1983), the appellate

court held that it is within federal court jurisdiction to review state court actions if the state court was acting without jurisdiction. In Miofsky the Ninth Circuit held that regardless of the title placed on the action, and regardless of any possible abstention practices of federal courts, if the state court was acting without personal jurisdiction, or violating state or federal law, federal courts must accept jurisdiction and provide injunctive relief.

The recent landmark decision of Pulliam v. Allen (1984) 104 S Ct 1970, made it clear that not only are citizens of this country entitled to declaratory and injunctive relief when a state court acts without personal jurisdiction, and in violation of his rights under state and federal law, but they are entitled to attorney fees. This right has been enlarged in Dykes v. Hoseman, 743 F.2d 1488 (11th Cir. 1984) to include damages.

The acts by the state court judge invoking these remedies are (a) violation of state law; (b) actions without personal jurisdiction; (c) actions without subject matter jurisdiction. These violations were clearly stated in appellant's complaint.

III. A STATE COURT JUDGE ACTING WITHOUT EITHER PERSONAL OR SUBJECT MATTER JURISDICTION LOSES HIS LIMITED JUDICIAL IMMUNITY AND INVOKES FEDERAL COURT JURISDICTION AND RESPONSIBILITIES.

The landmark decision of the United States Supreme Court in Pulliam v. Allen (1984) 104 S Ct 1970, solidified the right of citizens to federal court relief via declaratory and injunctive relief, and attorney fees.

In the instant action the district court turned a blind eye to the massive violations of state law, the actions

without personal and without subject matter jurisdiction, the great and irreparable harm appellant was suffering, refusing to address the specific acts.

Although the judicial defendants were shown to be acting without personal and without subject matter jurisdiction, and violating numerous state laws, the federal district court dismissed the action on the argument that "a judge performing judicial acts within his authority is absolutely immune from damages. Stump v. Sparkman, 435 U.S. 349 (1978)."

In this action the state court judges were obviously acting without personal and subject matter jurisdiction. Therefore Stump is clearly distinguished in that therein the state court judge did not act without personal jurisdiction, and did not act in violation of state or federal law.

The complaint clearly alleged, and by

factual statements proved that the judicial defendants were knowingly acting without personal jurisdiction, thereby depriving plaintiff of rights, privileges, and immunities secured by the Constitution and laws of the United States. The state court judges have been repeatedly reminded of these violations, and knew that they were violating the law and acting without jurisdiction.

Acting in violation of clear state law has been held to be actions outside of jurisdiction, as judges are not authorized to do so. The same can be stated of the federal district court and the Ninth Circuit Court of Appeal who themselves acted in violation of law, and arguably, without jurisdiction.

The absence of judicial immunity was articulated in Rankin v. Howard, 633 F.2d 844 (9th Cir. 1980), the Ninth Circuit held that:

> When the Supreme Court first formulated the "clear absence" standard,

> ... it stated that the principle of immunity applied when there was "jurisdiction of both subject and person." Bradley v. Fisher, 80 U.S. (13 Wall.) 335, 352 (1872). An absence of personal jurisdiction may be said to destroy "all jurisdiction" because the requirements of subject matter and personal jurisdiction are conjunctional. Both must be met before a court has authority to adjudicate that party's rights, whether or not the subject matter is properly before it. See, e.g., Kulko v. Superior Court, 436 U.S. 84, 91, 98 S.Ct 1690, 1696, 56 L.Ed.2d 132 (1978) ("[i]t has long been the rule that a valid judgment imposing a personal obligation or duty in favor of the plaintiff may be entered only by a court having jurisdiction over the person of the defendant") (citations omitted) *** Because the limits of personal jurisdiction constrain judicial authority, acts taken in the absence of personal jurisdiction do not fall within the scope of legitimate decision making that judicial immunity is designed to protect. See Gregory v. Thompson, 500 F.2d at 63. We conclude that a judge who acts in the clear and complete absence of personal jurisdiction loses his judicial immunity. [Emphasis added.]

In Lynch v. Johnson, 420 F.2d 818 (1970) the court recognized the breath of judicial immunity, but made clear that it is not unlimited, stating "it does not afford any protection to a judge acting

in clear abuse of this jurisdiction." Id. at 820. [emphasis added.]

IV. THE NONJUDICIAL DEFENDANTS INVOKED STATE ACTION, ACTED UNDER COLOR OF STATE LAW, AND ARE LIABLE FOR THE DAMAGES THEY DELIBERATELY CAUSED BY VIOLATION OF STATE AND FEDERAL LAW.

The nonjudicial defendants invoked state action, and acted under color of state law, subjecting themselves to the requirements that they respect civil and constitutional rights, or suffer the consequences. This responsibility is established in federal law, and provides legal counsel no greater protection than is provided to other citizens or judges.

The nonjudicial defendants, using Emma as a catalyst, are liable for damages under 42 U.S.C. section 1983 and 1985. It serves no legitimate interest to allow massive violations of civil and constitutional rights for the self-

serving interests of legal counsel.

The United States Supreme Court clearly held legal counsel liable for such acts. In Dennis v. Sparks, 102 S.Ct. at 186:

> [T]here was no good reason in law, logic, or policy for conferring immunity on private persons who persuaded the immune judge to exercise his jurisdiction corruptly. (604 F2d 976."

Citing Dennis v. Sparks, the court in Dykes v. Hoseman, 743 F.2d 1488 (11th Cir. 1984), addressed the liability of the attorney, stating that:

> [P]rivate parties who conspire with an immune judge in connection with the judge's official acts are acting under color of state law and may be held liable under section 1983. Dennis v. Sparks ....

The nonjudicial defendants, acting as legal counsel for defendant Emma Stich, filed a marriage termination action that (a) was clearly prohibited under state and federal law, and that contradicted the declarations made by their client, Emma Stich, that she was divorced from

plaintiff. The nonjudicial defendants had to deceive the district and the appellate courts, misrepresent state and federal law.

The nonjudicial defendants conspired among themselves, and then conspired with the California state court judges whose self-interests merged with theirs, after a federal civil rights violation action was filed against them.

In its dismissal of the nonjudicial defendants the district court was overly protective of San Francisco legal counsel. The district court judge held and implied that legal counsel have the right to violate civil rights with immunity, although no authority is found in the statutes or the law for this holding. The district court held that the acts of private parties "do not constitute acts "under color of law" within the meaning of section 1983." That is not what the law holds.

a. A Private Party is Acting Under Color of Law When He Acts With the Knowledge of and Pursuant to That Statute.

A private party, including an attorney, need not conspire with a judge to become subject to a civil rights violation action. The Court held, in Adickes v. S.H. Kress & Co, 398 U.S. 144 (1970) that the definition of acting under color of state law merely required that the individual act "with the knowledge of and pursuant to that statute."

While a conspiracy by the private defendants invokes liability under 42 U.S.C. section 1983 and 1985, there need not be a conspiracy for civil rights violation liability. Further support was shown in United States v. Price, 338 U.S. 787 (1966) where the Court held:

> "In cases under section 1983, 'under color' of law has consistently been treated as the same thing as the 'state action' required under the

Fourteenth Amendment." Id. at 794.

In Lugar v. Edmondson Oil Co., 102 S.Ct. 2744 (1982), the Court held that "state action and under color of law requirement are obviously related." Id. at 2749. Id. at 2753.

The Lugar Court quoted the passage from a footnote in Adickes v. S.H. Kress & Co., (398 U.S. 144 (1970), defining color of law to require merely that the individuals act "with the knowledge of and pursuant to that statute." Id. at 162 n.23. The Court also noted that actions under section 1983 might be brought to vindicate other constitutional or statutory rights which contained no element of state action. In such cases a finding of state action would be immaterial, but the requirement of color of law would remain.

In United States General, Inc. v. Schroeder, 400 F.Supp. 713, 717 (E.D. Wis. 1975) the court held that if an

attorney "willfully and maliciously commenced a frivolous garnishment action without substantial hope of success or other legitimate purpose," a claim would be stated under section 1983.
If the nonjudicial defendants had not conspired with the judicial defendants regarding their unlawful actions, they had, as a matter of law, little chance of success. Misstatement of law, misstatement of facts, and subornation of perjury, were required for the defendants to prevail.

In Harlow v. Fitzgerald, 457 U.S. 800 (1982), the plaintiff sought civil damages against defendant government officials that allegedly participated in a conspiracy to violate the constitutional and statutory rights of another--as in the instant action. The Court held that:

> Where an official could be expected to know that certain conduct would violate statutory or constitutional rights, he should be made to hesitate; and a person who suffers injury caused by such conduct may have a

cause of action ... If the law was clearly established, the immunity defense ordinarily should fail, since a reasonably competent public official [or legal counsel] should know the law governing his conduct." [Emphasis added.]

V. APPELLANT RAISED CONSTITUTIONAL ISSUES THAT HAVE NOT BEEN ADDRESSED BY THE DISTRICT COURT.

Appellant sought not only damages, but declaratory and injunctive relief, which were denied to him. Plaintiff raised other remedies, and constitutional issues, which were not addressed in the haste to dismiss the complaint.

The injunction remedy was addressed in Younger v. Harris (1971) 401 U.S. 37. The Court held that where a state court and judges have shown bad faith, even in criminal or quasi criminal proceedings, the anti-injunction statute does not apply if it would otherwise apply. (it does not apply under 42 U.S.C. § 1983 and 1985 actions.) Under the same reasoning, in the instant action where the state

court judge acts in bad faith the responsibility for federal court intervention is even greater.

Plaintiff has stated facts showing an unconstitutional interpretation and application of state law by the judicial defendants. A claim that the state law, or the interpretation of the state law, is in conflict with federal law, although called "statutory" claim, is in reality a constitutional claim based on the Federal Supremacy Clause. Federal courts are particularly appropriate bodies for application of preemption principles. Hagans v. Lavine (1974) 415 U.S. 528.

Plaintiff argued that his right to unabridged interstate travel was violated. The right to travel from state to state is constitutionally protected. Grissin v. Breckenridge (1971) 403 U.S. 88. (See also, Shapiro v. Thompson (1969) 394 U.S. 618.)

VI. THE DISTRICT COURT JUDGE WAS PREJUDICED, AND DENIED APPELLANT CONSTITUTIONAL RIGHT TO A FAIR AND IMPARTIAL COURT.

The intent of the district court judge was clearly to deny plaintiff his due process federal court remedies. During the first hearing following the sua sponte dismissal of the judicial defendants Judge Petal refused to allow plaintiff to speak. It is obvious that her interests were not to enforce the law, but to protect the interests of the state judicial defendants and the San Francisco law firm.

Judge Petal held that state appellate review of the dissolution action "is the one legitimate avenue of review." But appellant's complaint addressed the violations of his civil and constitutional rights upon exercising of the same appellate remedies. Appellant had just been punished for violating the

same appeal remedies: Orders to pay $50,000 as punishment for exercising the precise remedies provided by specific California law; character assassination; orders to go to jail; extended to a jail term; bench warrant for appellant's arrest.

Appellant had exercised appellate remedies for the prior three years, and each time his appeal was rejected, and accompanied with punishment for having exercised the remedies.

Further, federal decisional law makes it clear that state judicial remedies need not be exhausted when civil right violations are occurring.

Knowing that every relevant protection in state, federal and constitutional law had been violated, that appellant was punished for exercising these remedies, and that these harms were self-evident in the published decision, In re Marriage of Stich, supra, Judge petal held that

appellant must go back to the same judges, and endure more abuse and more violations of his civil and constitutional rights. Under this interpretation of Judge Petal's federal court responsibilities, a citizen is not only deprived of the civil right statutory protections, but forever barred from the federal protection of his civil rights.

A citizen whose rights have been violated, need not go back to the violators as his sole source of relief. (See e.g., Damico v. California (1967) 389 U.S. 416; Pulliam v. Allen (1984) 104 S.Ct 1970; Patsy v. Board of Regents of the State of Florida (1982) 457 U.S. 496; Pennoyer v. Neff (1878) 95 U.S. 714; Rankin v. Howard, 633 F.2d 844.

VII. THE DISTRICT COURT, AND THE COURT OF APPEALS, UNCONSTITUTIONALLY INVOKED THE FRIVOLOUS SANCTIONS TO UNCONSTITUTIONALLY AND ILLEGALLY DEPRIVE APPELLANT OF HIS FEDERAL DUE PROCESS REMEDIES.

In what surely was a clever tactic to void the civil and constitutional right of a targeted citizen, especially one seeking to expose a major aviation and government scandal as appellant has done, Judge Petal denied appellant his federal question rights, and then punished him for exercising his fundamental constitutional rights. She punished appellant with severe financial sanctions for having the "audacity" to exercise these fundamental rights.

Although the violations greatly exceeded the criteria for federal court jurisdiction and relief Judge Petal held that appellant's civil right violation

action was frivolous, and that he should pay for exercising the remedies provided by law, including this Court's holdings in Pullian v. Allen, supra. The displeasure of the district court's with this Court's holdings in Pulliam are clearly reflected in the actions of the district court and the Ninth Circuit Court of Appeal.

The financial sanctions are permitted "only upon a finding that the plaintiff's action was frivolous, unreasonable, without foundation, or brought in bad faith, ..." Christiansburg Garment Company v. EEOC, 434 U.S. 412, 416-416 (1978). (See also, United States Steel Corp. v. United States, 519 F.2d 359; Carrion v. Yeshiva University, 535 F.2d 722; Mayer v. Wedgewood Neighborhood Coalition, 707 F.2d 1020, 1021 (9th Cir. 1983).

The Christiansburg Court described the basis for attorney fees in a section 1983

action:

> that "where the alleged claim under the Constitution or federal statutes clear appears to be immaterial and made solely for the purpose of obtaining jurisdiction where such a claim is wholly insubstantial and frivolous" ... Frivolous claims include those to which "a complete defense is obvious from the pleadings."

The definition of a frivolous appeal in In re Marriage of Flaherty (1982) 31 Cal.3d 637:

> Free access to the courts is an important and valuable aspect of an effective system of jurisprudence, and a party possessing a colorable claim must be allowed to assert it without fear of suffering a penalty more severe than that typically imposed on defeated parties ... The objective standard looks at the merits of the appeal from a reasonable person's perspective ... whether any reasonable person would agree that the point is totally and completely devoid of merit, and therefore, frivolous ... an appeal is not frivolous if 'any of the legal points [are] arguable on their merits' ... [if] it can be said that 'any reasonable person would agree that [it is] totally and completely devoid of merit ... Fundamental constitutional mandates require that the basic protections of due process be followed ....

VIII. THE ACTUAL BASIS FOR THE PROTECTED JUDICIAL ATTACKS UPON APPELLANT LIES IN THE AVIATION AND GOVERNMENT SCANDAL PREVIOUSLY PROTECTED BY COURTS OF THE NINTH CIRCUIT.

Appellant is a former government air safety investigator who uncovered a major aviation and government scandal juxtapositioned with a series of fatal airline crashes, described in part in previous mandamus actions brought before the court of the Ninth Circuit. These actions included Stich v. Federal Aviation Administration, District Court case number 74982 RHS; Court of Appeal No. 75-2300; Stich v. National Transportation Safety Board, District Court case number 80-4526SAW; Ninth Circuit Court of Appeal number 82-8272.

The mandamus actions addressed fraudulent violation of major air safety requirements, and involved key personnel

within the Federal Aviation Administration, the National Transportation Safety Board, United Airlines, and those obstructing the exposure of the tragedy related misconduct. Plaintiff related the misconduct and the fraud to a series of fatal airline crashes, showing the coverup by other government agencies and departments. Plaintiff is a published author and has made over 800 radio and television appearances based on the subject of this misconduct and the related crashes. In his books, The Unfriendly Skies--an aviation Watergate, appellant describes the web of intrigue behind these fatal airline crashes, including a chapter devoted to the United State District Court, Northern District of California, and the Ninth Circuit Court of Appeals.

It is appellant's belief as shown by the facts that the original aviation and

government scandal has been extended by the actions of the nonjudicial defendant San Francisco law firm in the sham divorce action, to silence appellant's exposure activities. Further, that either in a preplanned manner, or by osmosis, the California judicial defendants joined forces with the nonjudicial defendants.

It also appears that the federal district courts of the Ninth Circuit became involved, and have a vested interest arising from their earlier dismissal of the fraud related mandamus actions to insure that the violations of appellant's civil and constitutional rights continue to final destruction. There is no other probable answer.

The nonjudicial defendants, the San Francisco law firm, has members who were directly and indirectly involved in the various government agencies cited in these writings and broadcasts. Clearly, these parties have a vested interest in

silencing appellant by the bizarre sham divorce action. Their interest has merged with that of the courts involved with this litigation.

CONCLUSION

Important federal issues are concerned in this action. Most directly, the right of citizens to the statutory civil right protections. The right to exercise this basic freedom is a right under law, and not to be defeated by mislabeling the action frivolous, and imposing severe financial sanctions, a technique that could undoubtedly raise the envy of many third world dictatorships.

There is the issue of relief when state law is violated. In appellant's case, he has been denied every relevant protection in substantive and procedural due process, bar none, as he sought to protect himself against the actions initiated by the nonjudicial defendants.

There is the issue of the right to

travel, the right to exercise and invoke court jurisdiction on the basis of residence, all of which have been denied to appellant although the same right is enjoyed by millions of other citizens yearly. There is the right to unabridged interstate travel. The right to a hearing before suffering a taking of personal and property rights, and even one's liberties.

The matter of the underlying aviation and government scandal is addressed in other actions. This court has a responsibility in all of these violations, including the air safety scandal, under Title 42 United States Code Section 1986, in that it has notice of the violations, and has the power to correct them.

Dated: February 28, 1987.

RODNEY F. STICH
Appellant in pro se

VERIFICATION

I, RODNEY F. STICH, declare:

I am the appellant in the foregoing appeal. The contents are true to the best of my knowledge.

Executed on February 28, 1987.

I declare under penalty of perjury that the foregoing is true and correct.

Signed in the City of Reno, State of Nevada, this 28th day of February 1987.

_____

Rodney F. Stich

DECLARATION OF SERVICE

I, Loes Litchfield, declare I am over the age of 18 years and not a party to this action. My place of residence is 238 Leisure Lane, Reno, Nevada

On March 5, 1987 I served the copy of this jurisdictional statement in an envelope addressed to each of the persons named below, at the address et out immediately below each respective name, and deposited said envelope in the United States mail at Reno, Nevada, with postage thereon fully prepaid.

Lawrence Gumbiner, Deputy Attorney General, 350 McAllister St, Room 6000 San Francisco, Calif. 94102,

Basil Plastiras, Suite 640, 220 Montgomery St, San Francisco, Ca. 94104

Rogers, Joseph, 10th Floor, 311 California Street, San Francisco, Ca. 94104.

Executed on March 5, 1987 at Reno, Nevada.

I declare under penalty of perjury that the foregoing is true and correct.

_____

Loes Litchfield

BEST AVAILABLE COPY

RODNEY F. STICH
Post Office box 11455
Reno, Nevada 89510
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Appellant in pro se

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RODNEY F. STICH, Plaintiff-Appellant, v. CALIFORNIA COURT OF APPEAL, First Appellate District, DIVISION FIVE, STATE OF CALIFORNIA; JUSTICES HARRY LOW, DONALD KING, ZERN HANING; JUDGES DWIGHT ELY and MICHAEL McINNIS, of the Superior Court; County of Solano; LARRY GIBBS; JEFFREY ROSS; FRIEDMAN SLOAN & ROSS, P.C. Defendants/Appellees.	Case Nos. 85-2375 85-2583 DC No. 85-3600

EXHIBIT "A"

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that RODNEY F. STICH, appellant above named, hereby appeals to the Uni States Supreme Court from the final judgment of

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District Court of Appeals, filed on December 12, 1986. The order appealed from dismissed the defendants in the civil right violation action filed in United States District Court, Northern District of California, under number CV 85-3600 MHP.

This appeal is taken pursuant to Title 28 United States Code Section 1257, subparagraph (2).

Dated: January 5, 1987.

RODNEY F. STICH
Appellant in pro se

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RODNEY F. STICH Plaintiff Appellant v. CALIFORNIA COURT OF APPEAL, First Appellate District, Division Five; JUSTICES HARRY LOW; DONALD KING, and ZERNE HANING; JUDGES DWIGHT ELY and MICHAEL McInnis, of the California Superior Court, County of Solano; LARRY GIBBS; JEFFREY ROSS; FRIEDMAN SLOAN & ROSS P.C., Defendant-Appellees.	)	CA Nos. 85-2375 85-2572 DC No. 85-3600 MHP MEMORANDU[1]

EXHIBIT "B"

Appeal from the
United States District Court
for the Northern District of California
Hon. Marilyn H. Patel, Presiding

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[1] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 21.

Submitted November 12, 1986**[2]
San Francisco, California

Before: MERRILL, KENNEDY, and HALL, Circuit Judges.

Unhappy with the results of California state dissolution proceedings brought against him by Emma Stich, Rodney Stich has turned to the federal courts. First, he unsuccessfully brought a § 1983 action against Emma Stich and the trial judges who decided the state case. See Stich v. Stich, No. 84-25893 (9th Cir. Dec. 23, 1985) (unpublished memorandum). Now, again under the rubric of 42 U.S.C. § 1983, Mr. Stich has brought essentially the same lawsuit, this time adding as defendants the California Court of Appeal, First Appellate District, Division Five, and three justices of that court (the "judicial defendants"),

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[2] ** The panel unanimously finds this case suitable for disposition without oral argument. Fed. R.App.P. 34(a); Ninth Circuit Rule 3(f).

and the law firm and attorneys who represented Emma Stich in the state dissolution proceedings (the "nonjudicial defendants"). The district court dismissed Mr. Stich's complaint against both the judicial defendants and the nonjudicial defendants. We affirm, and award double costs and attorneys'fees for this frivolous appeal.

Mr. Stich's complaint alleges that the judicial defendants committed various errors of state and federal law in the dissolution proceedings. The doctrine of judicial immunity bars any damage claims against the judicial defendants, since the judicial actions complained of were not taken "in the 'clear absence of all jurisdiction.'" See Stump v. Sparkman, 435 U.S. 349, 3577 (1978) (quoting Bradley v. Fisher, 80 U.S. (13 Wall.) 335, 351 (1872). The narrow exception to the judicial immunity doctrine for prospective injunctive relief, see Pulliam v. Allen, 466

U.S. 522 (1984), does not apply because Mr. Stich's claims for declaratory and injunctive relief are retrospective: he seeks a reversal of a state court decision. As the district court properly noted, section 1983 does not give the federal courts general appellate jurisdiction over the state courts. See Torres v. First State Bank, 588 F.2d 1322, 1326-27 (10th Cir. 1978).

As for the nonjudicial defendants, the complaint alleges that they "conspired with the other defendants in fraudulently arguing in unison the actual status of state and federal law, and the development of facts" (E.R. at 1-11). This conclusory language does not sufficiently allege that the private acts of the nonjudicial defendants were "under color of" state law for the purposes of § 1983. We have held that a § 1983 plaintiff seeking to prove a conspiracy between the government and private parties must show

"an agreement or 'meeting of the minds' to violate constitutional rights." Fonda v. Gray, 707 F.2d 435, 438 (9th Cir. 1983) (quoting Adikes v. S.H. Kress & Co., 398 U.S. 144, 158 (1970)). Merely "arguing in unison" with a judge does not transform a private litigant or attorney into a co-conspirator. See Dennis v. Sparks, 449 U.S.s 24, 28 (1980). Mr. Stich does not allege that the nonjudicial defendants bribed or otherwise unlawfully influenced the judicial defendants. As Judge Patel aptly noted below, "[if]f plaintiff's conclusory allegations of conspiracy were sufficient to state a claim under § 1983, virtually every disgruntled litigant in state court would be entitled to bring a § 1983 action in federal court against the opposing party and his or her attorneys" (E.R. at 18-4). Cf. Ashelman v. Pope, 793 F.2d 1072 (9th Cir. 1986) (en banc) (extending damage immunity doctrines to allegations of conspiracy between judge

and prosecutor).

This court has discretion to award attorneys' fees and single or double costs to the appellee for frivolous appeals. See Fed. R.App.P. 38. "An appeal is frivolous if the result is obvious or if the claims of error are wholly without merit." Malhiot v. Southern Cal. Retail Clerks Union, 735 F.2d 1133, 1137 (9th Cir. 1984), cert. denied, 469 U.S. 1189 (1985).

This appeal is frivolous. The entire lawsuit is indeed wholly without merit. Mr. Stich must be deterred from filing lawsuit after lawsuit against the opposing lawyers, courts, and judges from his past cases. Consequently, we award double costs and reasonable attorneys' fees for this appeal to the nonjudicial appellees.[3] The amount of the fees shall be determined by affidavits of

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[3] The judicial appellees do not seek attorneys' fees. See Judicial Appellee's Brief at 3.

the nonjudicial appellees, which shall be filed within thirty days, and by any opposition thereto, which may be filed by appellant within twenty days thereafter. See Eisenman v. Peoro (In re Peoro), 793 F.2d 1048, 1052 (9th Cir. 1986).

Mr. Stich must learn that his romp through the federal court must come to an end. Neither this nor any other federal court has a vendetta against him. It is time for him to take his lumps and move on.

Affirmed.